

Message Text

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SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES
(GSP) UNDER SECS. 502 (B) (4) AND (6) OF
TITLE V OF THE TRADE ACT OF ,974

REFERENCE: (A) STATE 282968

(B) STATE 282967

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1. BEFORE GSP CAN BE IMPLEMENTED UNDER THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION (ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT FOR IMPORTS FROM COUNTRIES DESIGNATED BY EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM CONFERRING ELIGIBILITY ON ANY COUNTRY WHICH HAS NATIONALIZED PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES, AND

REPORTS TO CONGRESS, THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. THESE PROSCRIPTIONS REINFORCE THE NEED FOR THE USG TO MONITOR AND ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT IS DESIRABLE THAT THE ITC CONDUCT ITS PRODUCT REVIEW ON THE MAXIMUM NUMBER OF POTENTIAL BENEFICIARIES AND THAT IT BEGIN WORK AS SOON AS POSSIBLE. WE PREFER TO CONDUCT OUR INVESTIGATION OF OUTSTANDING DISPUTES WHICH COULD AFFECT HOST COUNTRY ELIGIBILITY WHILE THE ITC STUDY IS IN PROGRESS. HOWEVER, DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS. ACCORDINGLY, WE REQUEST THAT THE EMBASSY INFORM THE DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH MIGHT AFFECT HOST COUNTRY LIMITED OFFICIAL USE

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ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6).

4. EVALUATION SHOULD BE BASED ON THE TEXT OF THE ACT. UNTIL DEFINITIVE LEGAL ANALYSIS OF 502 (B) (4) IS COMPLETED, POSTS SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD TO VALUE. WE ARE LIMITING THE EVALUATION TO CASES ARISING AFTER THE ESTABLISHMENT OF THE NATIONAL-

IST GOVERNMENT ON TAIWAN. SINCE SOME ACTIONS (SUCH AS FORCED CANCELLATION OF RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, THE POST IS REQUESTED TO INFORM DEPARTMENT OF SUCH CASES TO ENABLE US TO EXERCISE JUDGMENT IN DETERMINING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF 502 (B) (4) (A)-(C). JUDGMENTS MUST ALSO BE MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF 502 (B) (4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT UNDER 502 (B) (6).

5. IF APPLICABLE, WE WOULD ALSO APPRECIATE THE EMBASSY'S COMMENTS REGARDING STEPS THE USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF HOST GOVERNMENT OFFICIALS AND TO ENCOURAGE RESOLUTION OF OUTSTANDING DISPUTES. KISSINGER

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